



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on September 10, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-97-2939

***CORRECTED COPY**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **Polar Air Cargo, Inc.** filed **8/4/99**, supplemented **8/14/99** to:

XX Renew for two years exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of property and mail between points in the United States and Amsterdam, the Netherlands; Egypt; Ethiopia; Uganda; Kenya; Zimbabwe; and South Africa; and to integrate this authority with its existing exemptions and certificates of public convenience and necessity.

XX Renew allocation of three U.S.-South Africa all-cargo frequencies

XX Waiver from dormancy condition:

By Order 98-1-16 the Department granted Polar Air Cargo exemption authority to provide scheduled all-cargo service in the U.S.-South Africa market and allocated it three weekly all-cargo frequencies for this service. That award was subject to the condition that the frequency allocation will expire automatically and the frequencies will revert to the Department for reallocation if they are not used for a period of 90 days. On April 8, 1999, the Department granted Polar a waiver from the dormancy condition for one of its three frequencies until October 12, 1999.¹ Polar temporarily suspended all South Africa service on June 18, 1999, and seeks a waiver from the 90-day dormancy condition for its other two frequencies so that the 90-day dormancy period would not begin until December 16, 1999. Polar states that certain restrictions for operations via Nairobi and Harare had hampered further development of Polar's service to support operation of all three weekly frequencies.

Applicant rep.: **Jeffrey A. Manley, 202-879-5161** DOT analyst: **Sylvia Moore, 202-366-6519**

XX Granted (subject to conditions, see below)

***Corrects Notice of Action Taken dated September 10, 1999, which inadvertently omitted Ethiopia in exemption renewal.**

(See Reverse Side)

¹ Polar was using the other two of its three allocated frequencies.

DISPOSITION

The exemption authority granted was effective when taken: September 10, 1999, through September 10, 2001

The frequency allocation was effective when taken: September 10, 1999, and will remain in effect, provided that Polar continues to hold the necessary underlying authority to serve the above markets. (See conditions below and related dormancy waiver.)

The waiver from the dormancy condition was effective when taken: September 10, 1999, until December 16, 1999²

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

XX The authority granted is consistent with the aviation agreements between the United States and South Africa, the United States and the Netherlands, and the United States and Egypt, and the overall state of aviation relations between the United States and Ethiopia, the United States and Kenya, the United States and Uganda, and the United States and Zimbabwe.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX Holder's certificate of public convenience and necessity**
XX Standard exemption conditions (attached)

Conditions: Consistent with our standard practice, the frequency allocation granted is subject to the condition that it will expire automatically and the frequencies will revert to the Department for reallocation if they are not used for a period of 90 days.

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in award of the route integration authority requested should be construed as conferring upon Polar rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Polar notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Polar's authority by virtue of the route integration exemption granted here, but that are not then being used by Polar, the holding of such authority by route integration will not be considered as providing any preference for Polar in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

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² Polar's waiver from the dormancy condition, with respect to each of the two frequencies at issue, is effective until December 16, 1999, or until the date on which Polar resumes service with that frequency, whichever occurs earlier. Once the waiver ceases to be effective, the 90-day dormancy condition applies from that point forward.

On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*